

ORANGE COUNTY TRANSPORTATION AUTHORITY

Report on Agreed-Upon Procedures
Applied to Joint Powers Agreement No. 12-281
With the State of California, Department of Transportation

For the Period
February 10, 1999 through December 31, 2007



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Board of Directors
Orange County Transportation Authority
Orange, California

INDEPENDENT ACCOUNTANTS' REPORT **ON APPLYING AGREED-UPON PROCEDURES**

We have performed the procedures enumerated below, which were agreed to by the Orange County Transportation Authority (OCTA), solely to assist OCTA with respect to the compliance and financial review of Joint Powers Agreement No. 12-281 between OCTA and the State of California, Department of Transportation (Caltrans) for the period February 10, 1999 through December 31, 2007. This engagement to apply agreed-upon procedures was performed in accordance with the attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of the specified parties of this report. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

We were not engaged to, and did not conduct an examination, the objective of which would be the expression of an opinion on the specified elements, accounts, or items. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you. This report is intended solely for the use of the OCTA and Caltrans and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of the procedures for their purposes. However, this limitation is not meant to limit the distribution of this report which is a matter of public record.

Our procedures and findings are as follows:

1. We obtained and reviewed Joint Powers Agreement No. 12-281 and all amendments (collectively referred to as the Agreement) in order to gain an understanding of the requirements governing fiscal management and other project responsibilities, as well as to document matters of audit significance.

Results: Matters of audit significance noted during our review of the Agreement are as follows. According to the Agreement, the scope of services covers improvements consisting of a south transitway high occupancy vehicle (HOV) connector structure, which provides connections from the northbound I-405 HOV lane to the northbound SR-55 HOV lane and from the southbound SR-55 HOV lane to the southbound I-405 HOV lane, widening of the Main Street undercrossing and MacArthur Boulevard undercrossing, widening of MacArthur Boulevard roadway at SR-55 and replacement of the Redhill Avenue overcrossing. Collectively, these structural improvements are referred to as the Project. According to the Agreement:

- Caltrans' maximum obligation for the capital cost of construction shall be the total actual construction cost relating to widening the MacArthur Boulevard undercrossing, is estimated to be \$250,000, and shall not exceed this amount unless approved in writing by Caltrans.
- Caltrans' initial total obligation for the cost of construction for the MacArthur Boulevard undercrossing is \$250,000. This amount is subject to increase to cover the cost of utility protection, relocation or removal. The total obligation may also increase to cover cost in excess of the initial estimated total cost of construction. Such an increase in total obligation will be at the sole discretion of Caltrans and will be authorized in writing by Caltrans.
- Caltrans agrees to transmit monthly to OCTA by fax a summary listing of charges for OCTA's share of Project construction-related costs and costs for services, and within 7 working days submit a detailed billing for such charges with supporting documentation.
- Caltrans agrees to notify OCTA within 7 working days of any disputed invoice items. Caltrans shall credit all undisputed claims to OCTA. Upon resolution of any disputed claims, Caltrans shall make the appropriate adjustment to the OCTA project account.
- During the course of construction, Caltrans agrees to submit a monthly summary of charges and detailed statements of actual expenditures for construction and services to OCTA.
- Caltrans agrees to submit a monthly construction progress report to OCTA that details work performed and completed during the reporting period, including change orders, progress payments made and percentage progress achieved to date.
- Caltrans agrees to submit a quarterly report to OCTA of actual expenditure vs. monthly advances made by OCTA and updated planned reimbursement schedules. Caltrans is to monitor actual vs. planned expenditures to ensure sufficiency of OCTA funding.
- Caltrans agrees to consult with OCTA on all change orders for improvements estimated in excess of \$50,000 before implementation, except when necessary for the safety of motorists and/or pedestrians or protection of property.
- All records and accounts related to the Project are to be retained for a period of 3 years from the date of processing the final detailed statement of the Project. Additionally, all records and accounts related to the Project are to be made available to OCTA, if requested, at the Caltrans District Office.
- Caltrans agrees to provide a monthly listing of potential claims and the status of outstanding claims against the Project to OCTA.
- Caltrans agrees to incorporate requirements of the Federal Transportation Administration into the project.

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- The State's Disadvantaged Business Enterprise (DBE) goal will be included in the construction contract. The goal will be based upon the technical analysis of the contract terms and certified DBE subcontractors in the area.
2. We interviewed Caltrans' personnel and documented the invoicing process and controls in place to ensure that invoices submitted to OCTA are accurate, complete and properly reviewed and authorized.
- Results: No exceptions were noted as a result of the procedure performed.
3. We interviewed the responsible individuals at OCTA and documented the level and nature of review performed by OCTA staff to ensure that invoices received from Caltrans are complete and accurate.
- Results: No exceptions were noted as a result of the procedure performed.
4. We obtained a summary of all invoice payments made by OCTA to Caltrans and reviewed supporting documentation in order to gain an understanding of the type of Project expenditures claimed.
- Results: We noted that the nature of project expenditures claimed included construction costs, office and other miscellaneous costs, payroll costs and other administrative costs.
5. We judgmentally selected a sample of invoices totaling approximately 50% of the total costs incurred for the Project. For the sample selected, we reviewed construction materials costs claimed to ensure the expenditures were properly supported, reasonable and allowable according to the Agreement.
- Results: All construction materials costs reviewed were properly supported and allowable according to the Agreement. However, Caltrans was not consistent in applying its practice of verification and approval of costs. See Finding Number 1 in the Findings and Recommendations section of this report.
6. We judgmentally selected a sample of invoices totaling approximately 50% of the total costs incurred for the Project. For the sample selected, we reviewed Caltrans payroll costs claimed to ensure the expenditures were properly supported, reasonable and allowable according to the Agreement.
- Results: We noted that Caltrans payroll costs were supported by a Labor Distribution Report, which is automatically generated by the Caltrans payroll system. However, Caltrans was unable to provide timesheets to support hours actually worked on the Project. See Finding Number 2 in the Findings and Recommendations section of this report.

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7. We judgmentally selected a sample of invoices totaling approximately 50% of the total cost incurred for the Project. For the sample selected, we reviewed office, miscellaneous and other administrative expenses claimed to ensure the expenditures were properly supported, reasonable, and allowable according to the Agreement.

Results: Caltrans was unable to provide source documentation to support office, miscellaneous and other administrative expenses. This resulted in questioned costs of \$200,079. See Finding Number 2 in the Findings and Recommendations section of this report.

8. We obtained and reviewed the support for the MacArthur Boulevard undercrossing project to ensure that Caltrans was in compliance with the terms of the Agreement with regard to financial contributions.

Results: Caltrans completed the MacArthur Boulevard undercrossing project and satisfied the cost obligation in accordance with the terms of the Agreement.

9. We obtained and reviewed progress report folders maintained by Caltrans to ensure progress reports were prepared, contained required content and submitted to OCTA in accordance with the terms of the Agreement.

Results: Several progress reports were not provided for our review. All available progress reports were prepared in accordance with the terms of the Agreement. See Finding Number 2 in the Findings and Recommendations section of this report.

10. We reviewed the submission dates of the monthly invoices to determine whether they were submitted timely in accordance with the Agreement.

Results: Invoices dated within five years of the date of our audit fieldwork were submitted timely in accordance with the agreement. For invoices that were over five years, we were unable to verify if they were submitted timely, because according to Caltrans' internal policy, documentation is not maintained after 5 years from the documentation's transaction date. As an alternate procedure, we interviewed the Project Manager at OCTA, who indicated that Caltrans usually submits its invoices in a timely manner. No additional testing was performed.

11. We requested copies of the quarterly reports of actual expenditures that must be submitted by Caltrans in order to determine whether the reports were accurate and submitted in a timely manner.

Results: Caltrans was unaware of the requirement to submit quarterly reports of actual expenditures. See Finding Number 3 in the Findings and Recommendations section of this report.

12. We requested a copy of the detailed statement of total actual costs of construction and service, required to be completed at the end of the Project, in order to determine if the statement was accurate and submitted in a timely manner.

Results: According to Caltrans, the Project has not yet been completed. Therefore, the detailed statement of total actual cost of construction and service has not yet been submitted. No further testing was performed.

13. We interviewed Caltrans personnel and documented the bidding process surrounding the selection of the prime contractor. Additionally, we determined whether this process was in compliance with the terms of the Agreement.

Results: The prime contractor was selected on a competitive bid basis. There were five companies that bid on the Project. Caltrans awarded the contract to the lowest responsible bidder. This process was in accordance with the terms of the Agreement.

14. We interviewed Caltrans personnel and reviewed relevant documentation to ensure Caltrans and its prime contractor were in compliance with DBE requirements.

Results: The DBE requirement for this agreement was 3.0% of the total costs of the Project. The agreement further stipulated that Caltrans could award a contract to the lowest responsible bidder who meets the DBE goals or who made, in the sole judgment of Caltrans a good faith effort to do so. The prime contractor submitted evidence indicating that they subcontracted 2.0% of the total cost of the project to DBE firms. In addition, evidence was submitted to support the prime contractor's good faith efforts in attempting to retain DBE firms. No exceptions were noted as a result of the procedure performed.

15. We interviewed Caltrans personnel and documented the process for compliance with the Davis-Bacon Act (General Prevailing Wage Rates requirements).

Results: Caltrans performed procedures to monitor and ensure that the prime contractor and subcontractors were in compliance with the Davis-Bacon Act. However, Caltrans did not have a policy in place to certify that a review was performed. See Finding Number 4 in the Findings and Recommendations section of this report.

16. We judgmentally selected six pay periods and requested certified payrolls submitted by the prime and subcontractors to Caltrans under the Davis-Bacon Act monitoring procedures. We reviewed each worker's wage rate to the General Prevailing Wage Rate set forth by the State of California to ensure that the prevailing wage was paid.

Results: No exceptions noted as a result of the procedure performed.

17. We compared total costs claimed to the approved budget in the Agreement to ensure that total costs did not exceed the approved budget as of December 31, 2007.

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Results: As of December 31, 2007, total expenditures incurred were \$40,365,820 and the approved budget was 40,537,555. No exceptions noted as a result of the procedure performed.

We were not engaged to, and did not, conduct an audit, the objective of which would be the expression of an opinion, on the costs incurred by Caltrans in connection with the Project. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of the Orange County Transportation Authority and is not intended to be and should not be used by anyone other than those specified parties.

Mayer Hoffman A.C. P.A.

Irvine, California
October 31, 2008

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Findings and Recommendations

For the period February 10, 1999 through December 31, 2007

(1) Quantity Calculation Worksheets were not Consistently Signed

Caltrans did not consistently follow its internal policy to certify the Quantity Calculation Worksheet (Worksheet) which is used for the verification of actual construction costs incurred. The Field Supervisor performed regular inspections at the Project site to monitor the progress of the Project and track actual construction materials used. At the end of the month, the Field Supervisor completed the monthly Worksheets for the actual quantity of construction materials purchased and used during the month. The Worksheet is verified and approved by the Caltrans Resident Engineer. Caltrans' policy requires that both the Field Supervisor and the Resident Engineer to sign the Worksheet evidencing review and approval. During our testing of this review process, we noted numerous instances of the Worksheets not being signed by the Field Supervisor, the Resident Engineer or both. Since the Worksheets report cumulative totals, by reviewing subsequent Worksheets, we were able to substantiate that the units were actually used on the Project.

Failure to verify and approve the construction material quantities may result in over billing of costs.

Recommendation

As the construction portion of the Project has been completed, we recommend that for future projects, Caltrans follows its internal policy of properly certifying the Quantity Calculation Worksheets.

(2) Need to Retain Records as Required by the Agreement

Several records and other documentation required to support the costs incurred for the Project were not provided by Caltrans for purposes of our performing these agreed-upon-procedures. Specifically, for the items sampled, the following records were not provided.

- *Employee Timesheets* – In lieu of timesheets, Caltrans was able to provide Labor Distribution Reports that support payroll costs claimed. However, the timesheets represent the actual source documentation supporting hours charged to the Project.

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Findings and Recommendations (Continued)

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(2) **Need to Retain Records as Required by the Agreement (Continued)**

- *Invoices* – Invoices or other documentation to support sampled office, miscellaneous and other administrative costs were not provided. As such, we were unable to determine whether the following costs were reasonable, allowable and allocable to the Project. The total questioned costs due to a lack of documentation is as follows. These questioned costs are from our sample only and may not represent total questioned costs had all costs been reviewed.

<u>Description</u>	<u>Questioned Costs</u>
Resident Engineer's office charges	\$ 1,677
Miscellaneous costs	70,287
Other administrative costs	<u>128,115</u>
Total questioned costs	\$ <u>200,079</u>

- *Progress Reports* – Progress reports for the months of March 2000, April 2002, March 2003 and January 2004 through September 2004 were not provided. Beginning in January 2004, Caltrans stated that Caltrans and OCTA verbally agreed to substitute weekly newsletters for written monthly progress reports. There was no amendment to the Agreement documenting such a change.

In each of these instances, Caltrans stated that it is their policy to only retain records for a period of 5 years. After 5 years, the records are destroyed. The majority of these sampled items originated longer than 5 years ago, thus the records were in all likelihood destroyed by Caltrans.

Joint Powers Agreement 12-281, Section I, Article 20 states:

"To retain, or cause to be retained for audit by Authority auditors, for a period of three (3) years from the date of processing the final detailed statement of Project, all records and accounts relating to construction of Project, and make such materials available at State's District 12 Office, and copies thereof shall be furnished to Authority, if requested by Authority."

Failure to retain records as required by the terms of the Agreement can result in a disallowance of costs claimed.

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Findings and Recommendations (Continued)

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(2) **Need to Retain Records as Required by the Agreement (Continued)**

Recommendation

We recommend that OCTA recover \$200,079 from Caltrans for costs claimed that were not supported. As the construction portion of the Project has been completed, we recommend that for future projects, Caltrans retain records as required by the Agreement. We further recommend that should any terms of an agreement be modified, modifications be in writing and signed by both parties evidencing their mutual understanding.

(3) **Need to Submit Quarterly Actual Expenditures Reports**

Quarterly actual expenditures reports were not prepared and submitted for construction management costs that were advanced to Caltrans. Joint Powers Agreement No. 12-281, Section I, Article 15, states:

"To provide Authority quarterly reports of actual expenditures compared to the monthly advances made by Authority and to provide updated planned reimbursement schedules. State will monitor the actual versus the planned expenditures monthly to assure that Authority payments pursuant to Section II, Articles (3), (4), and (5) will always be sufficient."

Caltrans was unaware of the requirement to submit quarterly reports of actual expenditures. Additionally, OCTA did not request that the quarterly reports of actual expenditures be submitted.

Recommendation

As the construction portion of the Project has been completed, we recommend that for future projects, Caltrans submit quarterly actual expenditures reports as may be required. We further recommend that OCTA monitor future agreements to ensure Caltrans is adhering to the terms of the agreement.

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Findings and Recommendations (Continued)

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(4) Need to Document Review of Compliance with Davis-Bacon Act

Caltrans did not have procedures in place for documenting the review of labor rates to ensure compliance with prevailing wage requirements in accordance with the Davis-Bacon Act. Caltrans indicated this review was performed, but there was no evidence of the results. Based upon our review of labor rates, no exceptions to prevailing wages were noted. Failure to document compliance with the Davis-Bacon Act may result in disallowable costs.

Recommendation

As the construction portion of the Project has been completed, we recommend that for future projects, Caltrans develop procedures to ensure the review of labor rates for compliance with the Davis-Bacon Act is documented.